

No. EB3/10083/2005/HRD

Dated: 4th October 2010

From
The Director

To
All Head of Institution (thro' e mail)

Sir,

Sub: - *HRD – Right to Information Act 2005 – Office Memorandum from Government of India – copy forwarding – reg.*

Ref: - 1. *Govt letter No. 37767/Cdn5/10/GAD dated 01.06.2010.*
2. *Govt letter No. 39887/Cdn5/10/GAD dated 26.06.2010..*

The General Administration (Co – ordination) Department of Government of Kerala vide references cited has forwarded a copy of the Office Memorandum from Government of India on Disclosure of third party information under Right to Information Act 2005 and on payment of fee under Right to Information Act 2005 – scope of sub – section (3) of Section 7 of the Act. A copy of the Office Memorandum is forwarded herewith for information.

Yours faithfully
Sd/-
K. Viswanath
Administrative Officer
(FOR DIRECTOR)

Encl As stated above
Approved for Issue


Junior Superintendent

A.5.10.10

No. 12/9/2009-IR
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training

North Block, New Delhi,
Dated the 24th May, 2010.

OFFICE-MEMORANDUM

Subject :—Payment of fee under the Right to Information Act, 2005—Scope of sub-section (3) of Section 7 of the Act.

The Undersigned is directed to say that a question is raised from time to time whether a Public Information Officer (PIO) has power to charge fee under Section 7 (3) of the RTI Act, 2005 in addition to fee prescribed under Sections 6 (1), 7 (1) and 7 (5) of the Act.

2. Section 6 (1) of the Act enables the Government to prescribe application fee and sub-sections (1) and (5) of Section 7 to prescribe fee in addition to application fee for supply of information. On the other hand sub-section (3) of Section 7 provides the procedure which a PIO has to follow for realizing the fee prescribed under sub-sections (1) and (5) of the Section. Details of fees that can be charged by a public authority under the Central Government are contained in the Right to Information (Regulation of Fee & Cost) Rules, 2005. The Rules or the Act do not give power to the PIO to charge any fee other than prescribed in the Fee and Cost Rules. Attention in this regard is invited to following extracts from the common order passed by the Central Information Commission in Appeal No. CIC/MA/A/2008/0185 (Shri K. K. Kishore *Vs.* Institute of Company Secretaries of India) and Complaint No. CIC/WB/C/2007/00943 (Shri Subodh Jain *Vs.* Dy. Commissioner of Police):

“The Act under proviso to sub-section (5) of section 7 also provides that fee prescribed under sub-sections (1) and (5) of Section 7 shall be reasonable and no such fee shall be charged from the persons who are below poverty line as may be determined by the Appropriate Government. The Government has already prescribed fees as deemed reasonable mandated under sections 7 (1) and 7 (5) of the Act and in the view of the Commission there is no provision for any further fee apart from the one already prescribed under Sections 7 (1) and 7 (5) of the Act”.

“Thus, there is provision for charging of fee only under Section 6 (1) which is the application fee; Section 7 (1) which is the fee charged for photocopying etc. and Section 7 (5) which is for getting information in printed or electronic format. But there is no provision for any further fee and if any further fee is being charged by the Public Authorities in addition to what is already prescribed under Section 6 (1), 7 (1) and 7 (5) of the Act, the same would be in contravention of the Right to Information Act. The “further fee” mentioned in Section 7 (3) only refers to the procedure in availing of the further fee already prescribed under 7 (5) of the RTI Act, which is “further” in terms of the basic fee of Rs. 10. Section 7 (3), therefore, provides for procedure for realizing the fees so prescribed”.

3. The Commission, while delivering decision in above cases, recommended to this Department to make rules, for charging fee towards supply of information which may include fee for supply of books, maps, plans, documents, samples, models, etc. that are priced and towards postal/courier charges for mailing information, when postal/courier charges are in excess of minimum slab prescribed by the Department of Posts and for other similar situations.

4. The Right to Information (Regulation of Fee & Cost) Rules, 2005 already provide provisions for charging of fee for giving information in diskettes or floppies or in the form of photocopy; for providing samples, models, printed material like books, maps, plans etc.; and for inspection of records.

The Government have, however, not considered it desirable to charge fee towards expenditure involved in mailing information or overhead expenditure etc. Nevertheless, supply of information in a form which would disproportionately divert the resources of the public authority is taken care of by Section 7 (9) of the Act according to which information shall ordinarily be provided in the form in which it is sought but supply of information in a particular form may be refused if supply of information in that form would divert the resources of the public authority disproportionately.

5. It is hereby clarified that where a Public Information Officer takes a decision to provide information on payment of fee in addition to the application fee, he should determine the quantum of such fee in accordance with the fee prescribed under the Fee and Cost Rules referred to above and give the details of such fee to the applicant together with the calculation made to arrive at such fee. Since the Act or the Rules do not provide for charging of fee towards postal expenses or cost involved in deployment of man power for supply of information etc., he should not ask the applicant to pay fee on such account. However, wherever supply of information in a particular form would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the records, the PIO may refuse to supply the information in that form.

6. Contents of this OM may be brought to the notice of all concerned.

(Sd.)

K. G. VERMA,
Director.

Tel: 23092158.

1. All the Ministries/Departments of the Government of India.
2. Union Public Service Commission/Lok Sabha Secretariat/Rajya Sabha Secretariat/Cabinet Secretary/Central Vigilance Commission/President's Secretariat/Vice-President's Secretariat/Prime Minister's Office/Planning Commission/Election Commission.
3. State Information Commissions.
4. Staff Selection Commission, CGO Complex, New Delhi.
5. O/o the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
6. All Officers/Desks/Sections, DOP&T and Department of Pension and Pensioners Welfare.

Copy to : Chief Secretaries of all the States/UTs.

Copy also to : Central Information Commission with reference to the Commission's recommendation referred to above.

OFFICE MEMORANDUM

Subject:—Disclosure of third party information Under the RTI Act, 2005

The undersigned is directed to say that the Government, in a number of cases makes inter departmental consultations. In the process, a public authority may send some confidential papers to another public authority. A question has arisen whether the recipient public authority can disclose such confidential papers under the RTI Act, 2005. If yes, what procedure is required to be followed for doing so.

2. Section 11 of the Act provides the procedure of disclosure of 'third party' information. According to it, if a Public Information Officer (PIO) intends to disclose an information supplied by a third party which the third party has treated as confidential, the PIO, before taking a decision to disclose the information shall invite the third party to make submission in the matter. The third party has a right to make an appeal to the Departmental Appellate Authority against the decision of the PIO and if not satisfied with the decision of the Departmental Appellate Authority, a second appeal to the concerned Information Commission. The PIO cannot disclose such information unless the procedure prescribed in section 11 is completed.

3. As defined in clause (n) of Section 2 of the Act, 'third party' includes a public authority. Reading of the definition of the term, 'third party' and Section 11 together makes it clear that if a public authority 'X' receives some information from another public authority 'Y' which that public authority has treated as confidential, then 'X' cannot disclose the information without consulting 'Y' the third party in respect of the information and without following the procedure prescribed in Section 11 of the Act. It is a statutory requirement, non-compliance of which may make the PIO liable to action.

4. The Public Information Officers and the First Appellate Authorities should keep these provisions of the Act in view while taking decision, about disclosure of third party information in general and disclosure of the third party information, when third party is a public authority, in particular.

5. Hindi version will follow.

(Sd.)

K. G. VERMA,
Director.
Tel: 23092158

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